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Via email (kivowitz.sharon@epa.gov) and
Certified Mail, Return Receipt Requested

Sharon E. Kivowitz, Esq.
Assistant Regional Counsel
Office of the Regional Counsel
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

Re: New Cassel/Hicksville Groundwater Contamination Superfund Site, OU1
Index No. CERCLA-02-2018-2015
Grand Machinery Exchange, Inc.
Notice of Intent

Dear Ms. Kivowitz:

As you know, this firm represents Grand Machinery Exchange, Inc., (GME), in this matter. GME submits this response to the March 22, 2018 Unilateral Administrative Order For Remedial Design, as amended on May 17, 2018 (collectively, the UAO), regarding the New Cassel/Hicksville Groundwater Contamination Superfund Site (NCHGCS), issued by the United States Environmental Protection Agency, (USEPA). According to a letter, dated May 17, 2018, written by John B. Prince, Acting Director, Emergency and Remedial Response Division, USEPA Region 2, (the Prince Letter), the Effective Date of the UAO has been set by the USEPA as May 21, 2018. Pursuant to paragraph 49 of the UAO, and as set forth in the Prince Letter, the parties' Notice of Intent to Comply letters must be submitted by May 24, 2018. This letter is timely submitted.

In response to paragraph 49 of the UAO, at this time, GME is unable to make a commitment to comply with the terms of the UAO. Pursuant to paragraph 50 of the UAO, GME is setting forth in this letter several reasons underpinning its position, each of which is a sufficient cause under 42 USC §§ 9606(b) and 9607(c)(3) to establish GME's defenses to the UAO. These sufficient

cause defenses demonstrate why the USEPA should not have included GME as a named respondent in the UAO, should not seek to enforce the UAO against GME, and should not seek penalties, fines and/or treble damages from GME.

GME IS NOT LIABLE AS IT IS NOT A RESPONSIBLE PARTY (PRP) WITHIN THE MEANING OF 42 USC § 9607(a)

GME owns property located at 36 Sylvester Street, Westbury, NY, (the 36 Sylvester Property). There is no evidence that the 36 Sylvester Property is a source of groundwater contamination. Since the 36 Sylvester Property is not a source of groundwater contamination, GME cannot and does not have any liability for the groundwater contamination and there is no basis for the USEPA to include GME in the UAO.

To begin with, and as discussed with you on multiple occasions and as demonstrated in prior written submissions to the USEPA, documentary evidence establishes that the 36 Sylvester Property was never associated with any solvent release or threat of release and was not and is not a source of the groundwater contamination. These written submissions and discussions include, but are not limited to, GME's September 26, 2013 submission to the USEPA containing GME's response to the USEPA § 104 Request for Information, (GME's § 104 Response), letters to Ms. Kivowitz, dated August 8, 2014, August 13, 2014, and April 18, 2016, and multiple meetings and discussions with Ms. Kivowitz, Ms. LaPoma and other USEPA personnel. These documents and discussions demonstrate beyond any doubt that the 36 Sylvester Property is not and was not a contributor of volatile organic compounds, (VOCs), to the groundwater.

As documented in GME's § 104 Response, GME purchased the 36 Sylvester Property in March 1957 and never conducted any operations at the property. Rather, it strictly has been the landlord since acquiring the property.

As explained in the 2003 Record of Decision for the 36 Sylvester Property, (2003 ROD),[1] issued by the New York State Department of Environmental Conservation, (NYSDEC), in 1988, the NYSDEC listed the entire 170-acre New Cassel Industrial Area, (NCIA), as a single state superfund site. The entire NCIA site was removed by the NYSDEC from its registry of state superfund sites in 1995, at which time the NYSDEC added 12 individual sites located within the NCIA to the state registry. The 36 Sylvester Property WAS NOT added to the registry of state superfund sites as part of this re-listing. This demonstrates that the NYSDEC did not consider the 36 Sylvester Property to be a source of groundwater contamination, based on the studies and data the NYSDEC had in its possession. See 2003 ROD, at p. 3 (GMEI-00894). The 2003 ROD also explained that the 36 Sylvester Property was added to the state superfund registry in 1999, based upon certain site specific findings, unrelated to groundwater contamination. *Id.*

Shortly after the 36 Sylvester Property was added to the state registry in 1999, GME agreed to

[1] The 2003 ROD can be found on the CD that accompanied GME's § 104 Response, at pages GMEI-00888 through GMEI-00912. For convenience, we are including a copy of the 2003 ROD from that submission with this letter.

implement a Focused Remedial Investigation/Focused Feasibility Study of the site. GME voluntarily entered into a consent order with the NYSDEC to conduct this work and quickly went about implementing the investigation. The Remedial Investigation examined all of the existing and former interior and exterior drainage systems and structures to determine if they could be a source of a discharge. Soil samples were taken at multiple depths near or in the two drywells associated with the former on-site sanitary system. (The 36 Sylvester Property was connected to the municipal sewer system in January 1987.) Groundwater samples from 17 locations were also taken during the Remedial Investigation. Although the NYSDEC suspected that the two dry wells might be a source of VOC groundwater contamination, no such contamination was found in or associated with either dry well. One of the drywells, (identified in the 2003 ROD as UIW-002), did not contain any elevated levels of VOCs, semi-volatile organic compounds or metals. The other drywell, (identified in the 2003 ROD as UIW-001), only had elevated levels of the metals chromium, copper, mercury and zinc, not of concern to the groundwater emanating from the NCIA. GME conducted an interim remedial measure, (IRM), in May 2002 that fully addressed the elevated metals detected in UIW-001.

More specifically, and importantly, the NYSDEC made the following findings and statements in its 2003 ROD that wholly undercut the USEPA's position about GME being a PRP for groundwater contamination.

As noted in the 2003 ROD, the Remedial Investigation, conducted in two phases, included:

- a thorough "exterior inspection to identify drainage structures, loading areas, utility service entrances, vents, and sanitary connections"
- a thorough "inspection to determine current building uses, facility locations, discontinuities indicative of prior plumbing arrangements and any items that warranted further investigation using remote sensing and/or destructive survey methods"
- a "geophysical survey employing ground penetrating radar (GPR) . . . to determine the locations of underground structures, pipes and storage tanks"
- "destructive surveys to expose subsurface structures including two abandoned drywells associated with the former on-site sanitary disposal system, floor drains in the southeastern portion of the warehouse, a concrete patch in the southeastern portion of the warehouse, and the interior roof drainage pipe with open ports in the southern portion of the warehouse"
- soil sampling at or near the two abandoned drywells associated with the former sanitary system
- groundwater samples at 17 locations at various depths.

See 2003 ROD, at pp. 3-4 (GMEI-00894 through GMEI-00895).

As noted in the 2003 ROD, the NYSDEC determined that, with respect to the subsurface soil:

- soil samples taken from two locations at or near the two former drywells were from six

depths, starting at 18 feet below grade to 45 feet below grade

- although certain VOCs were detected in drywell UIW-001, with the highest concentrations found at the 18 foot level, (about 4 feet below the drywell bottom), none of the VOC detections were above soil cleanup guidelines.

See 2003 ROD, at p.5 (GMEI-00896).

As noted in the 2003 ROD, the NYSDEC determined that, with respect to the groundwater:

> [T]he two drywells UIW-001 and UIW-002 would be the most likely source of VOC groundwater contamination at the site . . . contaminant concentrations were typically highest at sampling locations east of the drywells and much lower to the west. If the dry wells were the source of the groundwater contamination found beneath the site, the contamination would be greater to the west and less to the east (groundwater at the site flows from northeast to southwest). VOC contamination with the same constituents as the on-site contamination is also found directly upgradient of the site. Additionally, as noted above, the primary constituents of the groundwater contamination at the site (1,1,1-trichlorethane, 1,1-dichloroethene and trichloroethene) were not found in on-site subsurface soils. There are two Class 2 sites located upgradient and to the east of the subject site, which are associated with the VOC contaminants found in groundwater at the site.

See 2003 ROD, at p. 6 (GMEI-00897). The direction of groundwater flowing to the southwest in the Central Plume area is admitted to on page 4 of the Prince Letter, citing to Section 3.2 of the USEPA's Supplemental Feasibility Study Tech Memo.

The remedy selected by the NYSDEC in the 2003 ROD for the 36 Sylvester Property was "no further action" and delisting of the 36 Sylvester Property from the state registry. Significantly, in the 2003 ROD, the NYSDEC determined that its "selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action." See 2003 ROD, at p. ii (GMEI-00890). As noted above, the NYSDEC concluded in the 2003 ROD that the most likely source of the VOCs detected in groundwater under the 36 Sylvester Property was coming from upgradient sources and not from the 36 Sylvester Property itself.

The most likely upgradient sources for the groundwater contamination that are located in the NCIA include, but are not limited to, sites owned or operated by PRPs associated with the Central Plume, including Tishcon Corp., (Tishcon), Arkwin Industries, Inc., (Arkwin), LAKA, Patel Trust July 29, 1977, and William Gross. Several of these sites were specifically mentioned in the Focused Remedial Investigation/Focused Feasibility Study Report, a copy of which was included on the CD that accompanied GME's § 104 Response.

As the groundwater flows to the southwest in the Central Plume area, as admitted to by the USEPA, other likely upgradient source sites include the PRPs identified by the USEPA for NCHGCS OU2, namely the Sylvania sites located on Cantiague Rock Road and the General Instruments site located on West John Street, in Hicksville. We have been advised that the Sylvania sites are being investigated by the Army Corps of Engineers under the Formerly Utilized Sites Remedial Action Program, as they were operated by a government contractor on behalf of the United States government. Despite the fact that the OU2 sites have confirmed, massive VOC-contaminated groundwater plumes at and migrating from them towards OU1, the USEPA inexplicably refuses to include these OU2 sites and the PRPs responsible for the OU2 sites in the UAO for OU1.

Other potential source sites for the VOC contamination in the Central Plume include some or all of the Eastern Plume PRPs, as their sites are located to the north/northeast (upgradient) of the 36 Sylvester Property. Importantly, although the groundwater sampling conducted by the NYSDEC and the PRPs and modeling based on this sampling show that the Eastern Plume is migrating to and impacting the Central Plume, the USEPA fails to take this into account in the UAO. None of these upgradient sites, located within the NCIA, or upgradient of the NCIA, was ever owned by, operated by or is otherwise related to GME.

As you well know, and as admitted to on page 2 of the Prince Letter, the USEPA did not conduct its own groundwater testing of the NCHGCS. Rather, it used the historical groundwater sampling data from the NYSDEC in compiling the USEPA's 2013 Supplemental Remedial Investigation and Feasibility Study for OU1, (2013 Study), which is the basis of the OU1 remedy selected by USEPA and the scope of work set forth for the UAO. Remarkably, even though the NYSDEC concluded that its data definitely demonstrated that the 36 Sylvester Property was not a source of the VOCs detected in the groundwater, the USEPA contends otherwise. This assertion by the USEPA is based upon absolutely no data. The USEPA has not provided any evidence to GME that shows the 36 Sylvester Property is a source of the groundwater contamination for OU1. In fact, during the April 17, 2018 meeting, the USEPA claimed it was relying on the name of one of the former tenants of the 36 Sylvester Property as a basis for including GME as a PRP without any information or evidence about what that entity did at the property. This is shear speculation by the USEPA and wholly insufficient to support the inclusion of GME in the UAO. Despite this total lack of evidence, the USEPA wrongfully refuses to do what the evidence requires it to do, drop GME from its list of PRPs for the NCHGCS OU1 and remove GME from the UAO.

Separate and apart from these factual deficiencies, which demonstrate that GME is not a PRP and should not have been included in the UAO or anything else associated with the NCHGCS, GME has other sufficient cause defenses to the UAO. These are discussed below.

THE ISSUANCE OF THE UAO TO GME VIOLATES CERCLA AND THE USEPA'S POLICY DOCUMENTS

CERCLA requires that a response action may not be "arbitrary and capricious or otherwise not in accordance with law." 42 USC § 9613(j)(2). Thus, the USEPA does not have unfettered authority in enforcing CERCLA. It is bound to follow the laws, legal precedent and the USEPA's own policies. That has not occurred in this matter with respect to GME.

The USEPA's CERCLA policies prohibit the issuance of a UAO unless there is "adequate evidence of the PRP's liability." OSWER Directive 9833.0-1a, at p. 14. That same provision requires the USEPA to possess "[e]vidence sufficient to support the liability of each PRP named as a respondent." *Id.* No such evidence exists with respect to GME. On the contrary, the evidence demonstrates that GME has no liability for the NCHGCS.

Pursuant to the USEPA's UAO guidance, the USEPA must include in a UAO specific facts that the agency is relying upon to establish a party's liability. These specific facts, including site conditions, must be described in detail, and cannot be mere conjecture or unsupported assumptions. See OSWER Directive 9833.0-1a, at p. 17. That same policy document requires the USEPA to consider the volume and nature of the substances a party may have contributed when the USEPA is dealing with a site at which there are multiple PRPs. OSWER Directive 9833.0-1a, at p. 15. The USEPA failed to comply with these policy requirements.

With respect to GME, the UAO states, in a conclusory fashion, that GME "is the current owner of a facility located at 36 Sylvester Street, Westbury, New York, and was the owner of that facility at the time of disposal of 1,1,1-TCA, and thus it is a responsible party within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 USC § 9607(a)(1) and (2)." That does not comport with the OSWER guidance as the UAO contains no facts that support this conclusory statement. As noted above, the NYSDEC determined that the 36 Sylvester Property did not contribute VOCs to the groundwater. The compound 1,1,1-TCA, (1,1,1-trichloroethane), is a VOC. The NYSDEC also determined that the 36 Sylvester Property did not contribute any other substance to the groundwater contamination based on a thorough assessment conducted by GME with oversight by the NYSDEC. The USEPA has not conducted any assessment of the 36 Sylvester Property and has done no sampling of the 36 Sylvester Property. Rather, the USEPA simply contends that it thinks otherwise, a wholly insufficient basis to support the issuance of a UAO to GME.

Importantly, the USEPA guidance requires the agency to consider the proportionate share of liability of a party before issuing a UAO. OSWER Directive 9833.0-1a, at p. 15. Here, the USEPA wholly ignored the evidence that established no liability on the part of GME.

Equally important, the USEPA refused to include two of the larger contributors to the groundwater contamination, the upgradient Sylvania and General Instruments sites, as PRPs for OU1. The government contractor that operated the Sylvania sites (and/or its successors-in-

interest), the United States government, notably the Department of Defense, and General Instruments (and/or its successors-in-interest) are liable for the groundwater contamination emanating from those upgradient sites. The USEPA's refusal to consider these entities as PRPs is stunning, particularly in light of the large quantity of data that the parties offered to give the USEPA and data from the NYSDEC that demonstrate that the VOC groundwater plumes from these upgradient sites are migrating to the southwest and impacting OU1. Equally stunning is the limited data the USEPA provided to the parties on the same day of the April 17, 2018 conference held in connection with paragraphs 46 and 47 of the UAO. That limited data came from Phase I of the UEPA's Remedial Investigation for OU3. It showed the location of six wells installed in OU3 that are south and southwest of OU1 that intercepted the massive VOC groundwater plumes from the Sylvania and General Instruments sites. Faced with this mounting evidence, the USEPA's failure to include the owners and operators of the Sylvania and General Instruments sites and the federal government as PRPs for NCHGCS OU1 is inexplicable, is without any basis in fact, and violates the USEPA's own policies.

ISSUANCE OF THE UAO TO GME IS ARBITRARY, CAPRICIOUS AND UNREASONABLE

The USEPA acted in an arbitrary, capricious and unreasonable manner in issuing the UAO to GME. The USEPA's untoward actions amount to an abuse of discretion.

First of all, the USEPA wants the PRPs to undertake a remedial design to fill in data gaps for the remedial action to come, but the logic behind it is fundamentally flawed, and is based on critically defective data. Rather than utilize the enormous amounts of data from soil and groundwater sampling collected by the PRPs and others over the past 30 years, the USEPA chose to rely on questionably-collected results and defective modeling. The folly of the USEPA's approach was explained in detailed in comments previously submitted to the USEPA by many of the parties, including GME. All of these comments were systematically and improperly ignored by the USEPA. Most recently, in the Prince Letter, the USEPA admits it used historical data from the NYSDEC, most of which date back several decades, but refused to consider more recent data from the parties. The USEPA's cherry-picking of which "historical" data to include and which to exclude in its conceptual model significantly undercuts the validity of the USEPA's OU1 ROD and highlights the USEPA's arbitrary actions in issuing the UAO.

Secondly, the USEPA is required by CERCLA and the guidance documents issued pursuant to that statute, to engage in meaningful settlement discussions with de minimis parties as **promptly as possible**. See 42 USC § 9622(g)(1) and OSWER Directive 9834.7-1C, at pp. 2 and 9. It is important to note that the threshold of information required to initiate de minimis settlement discussions is relatively minor. As noted in that OSWER Directive, the purpose of early consideration of a PRP's de minimis status "is to reduce transaction costs, conserve government resources and settle with the eligible parties as expeditiously as possible." OSWER Directive 9834.7-1C, at p. 13.

In this case, GME provided detailed evidence, including the remedial investigation and feasibility

study, the IRM report and the 2003 ROD, that establishes the 36 Sylvester Property did not contribute VOCs or any other substances of concern to the groundwater contamination. Even though GME established it was not liable, it was willing to discuss a de minimis settlement with the USEPA as a method to end the USEPA's unwarranted pursuit of GME. Despite GME's multiple requests to the USEPA over the past several years to discuss such a settlement, the USEPA has steadfastly and unjustifiably refused to do so, in violation of CERCLA. In fact, the USEPA indicated, contrary to CERCLA and the USEPA's own policy, that such settlement discussions would not occur until after the Remedial Design and Remedial Action were implemented, a position reiterated on page 7 of the Prince Letter.

The USEPA's position in this case wholly defeats the purpose of de minimis settlements. Here, the USEPA is demanding that the PRPs, including GME, expend millions of dollars to implement an elaborate and costly scope of work for the remedial design, (for a remedy that the PRPs have shown numerous times to the USEPA is likely to fail), for which GME has no liability, which is what the de minimis settlement process is designed to avoid.

The USEPA's position also violates the Administrative Procedure Act, (APA), 5 USC § 706. Under that section, when reviewing an administrative agency's action, a court will determine if the agency acted arbitrarily, capriciously, abused its discretion, acted not in accordance with law, or failed to observe lawful procedure, and upon such a finding, set aside the agency decision. In this case, the USEPA, among other things, wrongfully refused to remove GME as a PRP, even though the unrefuted evidence established the 36 Sylvester Property was not a source of groundwater contamination. The USEPA also failed to include upgradient and federal government PRPs and failed to engage in de minimis settlement discussions "as promptly as possible" with GME (and other appropriate parties) as required by 42 USC § 9622(g)(1) and OSWER Directive 9834.7-1C.

DIVISIBILITY OF HARM

The USEPA incorrectly seeks to hold the named respondents jointly and severally liable in the UAO. Specifically, paragraph 54(a) of the UAO states that all named PRPs are jointly and severally liable for the "Common Work Elements" and for all other general obligations under the UAO. Paragraph 54(c) states that the PRPs for the Central Plume (GME, Arkwin, Patel Trust July 29, 1977, Tishcon and William Gross) are also jointly and severally liable for the Scope of Work required by the Central Plume Group Respondents.

The divisibility doctrine, however, prevents the USEPA from holding GME jointly and severally liable with respect to the Common Work Elements, other general obligations, and/or the Central Plume Scope of Work as "there is a reasonable basis for determining the contribution of each cause to a single harm." *Burlington N. & Santa Fe Ry v. United States*, 556 US 599, 614 (2009). In other words, PRPs are not subject to joint and several liability under CERCLA where the evidence shows the harm is divisible. As noted in *Burlington*, evidence that supports divisibility of harm does not need to be exact or complete, and that even a 50% margin of error

in the data would be acceptable. *Id.* at 616-17; see also OSWER Directive 9833.0-1a, at p. 13. Once the harm is determined to be divisible, the PRP is only liable for the harm it caused. In this case, GME caused NO harm as the unrefuted evidence establishes that the GME site did not contribute contamination to the groundwater.

Here, the harm is divisible as the chemicals detected in the plumes are different, the volumes of such chemicals used at the sites are different and the history of releases at the sites are well-known, documented and are different. As to GME, there is no evidence that there was any release or threat of release of any chemical of concern from the 36 Sylvester Property into the groundwater. In fact, the evidence establishes that the 36 Sylvester Property was not a source of VOCs to the groundwater. Therefore, not only is harm divisible, (meaning that joint and several liability is inapplicable), GME's share of that harm is 0%.

IT IS IMPOSSIBLE TO COMPLY WITH THE UAO

The UAO and its Scope of Work contain many elements that prevent compliance by GME and the other parties named in the UAO. First and foremost, paragraph 54(e) of the UAO requires the PRPs to communicate with the USEPA through "only one coordinated, combined, comprehensive and cohesive submission." The UAO requires the PRPs to select a single Project Coordinator to coordinate the work required under the UAO. That Project Coordinator must also coordinate the submittals required by all Respondents to the USEPA. This is simply not workable, especially in light of the fact that the PRPs are adverse to each other and there is simply no one Project Coordinator who can represent the conflicting and contrary positions of the PRPs. With respect to GME, in particular, GME has no liability for OU1. The other Central Plume PRPs, Eastern Plume PRPs and upgradient OU2 PRPs are the sources of the groundwater contamination that the USEPA contends, without a shred of evidence, is associated with the 36 Sylvester Property.

Similarly, the PRPs are required to designate Supervising Contractors to supervise the work. As with the Project Coordinator, the Supervising Contractors are subject to the same conflicts and contrary positions of the PRPs, making their ability to do this job impossible.

THE FINANCIAL ASSURANCE REQUIRED IN THE UAO IS UNNECESSARY AND PUNITIVE

The USEPA's guidance on the issuance of UAOs directs the USEPA to consider financial constraints of the PRPs *before* issuing a UAO. See OSWER Directive 9833.0-1a, at p. 15. Here, the USEPA categorically refused to enter into any such discussions with the parties.

Furthermore, the financial assurance required under Section XII of the UAO is onerous and unnecessarily burdensome. It requires the Central Plume PRP Group to establish a trust fund, purchase a surety bond, issue an irrevocable letter of credit or guarantee $971,000 for the Central Plume work and another $320,000 for the Common Work Elements. As noted above, GME has no liability for OU1, yet it would be forced to encumber $1.25 million of its assets for

the work being required of the Central Plume PRP Group. This is exactly why the USEPA is required to negotiate de minimis settlements at the start of this process, rather than at the end, to avoid companies having to pledge or otherwise encumber significant assets when they, like GME, have no connection to (or even very limited connection to) the contamination of concern.

NO IMMINENT AND SUBSTANTIAL ENDANGERMENT EXISTS

The USEPA cannot issue a UAO without evidence of an "imminent and substantial endangerment" caused by a release or threat of release from a facility. 42 U.S.C § 9606(a); see also, OSWER Directive 9833.0-1a, at p. 7, cautioning the USEPA that a UAO "must include findings on the hazardous substance(s), the nature of the release or threat of release, the location of the release . . . [and] the nature of, and basis for the finding of, a possible imminent and substantial endangerment." The UAO is lacking any factual allegations to support a finding of imminent and substantial endangerment and no such factual allegations can be made, especially against GME.

There was no imminent or substantial endangerment to the public health prior to issuance of the UAO and no such condition exists after its issuance. The contamination migrating from the NCIA was discovered in the 1980s; and has been studied by the NYSDEC since it initially classified the entire NCIA as a state superfund site in 1988. The Bowling Green Water District, located south of the NCIA, implemented two remedial projects, which have wholly addressed the groundwater contamination it detected in its supply wells. The first system, a granulated active charcoal system, was installed in 1990. In 1995, the air stripper tower was installed. These systems, employing proven and effective well-head treatment at the Bowling Green Water District supply wells over the past three decades, continue to operate to ensure the safety of the water supply. This history is admitted to by the USEPA in the UAO. See UAO at ¶¶ 13-15. The USEPA added the NCHGCS to the National Priorities List (NPL) in 2011, more than 15 years after the installation of these remedial systems, which have continued to operate and continue to prevent exposure to VOCs detected in the groundwater. Clearly, there is no imminent and substantial endangerment.

In the Findings of Facts section contained in the UAO, the USEPA recited the 30-year history that preceded its NPL listing, and listed the names and sites for each of the named PRPs. What is strikingly missing from the Finding of Facts section is any allegation about imminent and substantial endangerment. In fact, the only statement in the UAO about supposed health effects of exposure to VOCs is a generic comment. See UAO at ¶ 27. It is not surprising the UAO does not include any specific allegation about imminent and substantial endangerment as the two remedial techniques at the Bowling Green Water District have prevented any potential or actual exposure to VOCs in the groundwater. More importantly, GME's facility was not a source of any groundwater contamination, and the 36 Sylvester Property, accordingly, cannot be the cause of any imminent or substantial endangerment. Therefore, the issuance of a UAO to GME in the absence of any evidence of an imminent or substantial endangerment violates CERCLA and the USEPA guidance policy.

STATUTE OF LIMITATIONS

The USEPA's claims are time-barred. The tolling agreements signed by the parties do not change this. The USEPA's claim against GME arises from the agency's assertion that groundwater contamination emanated from the 36 Sylvester Property, which assertion, as explained above, is wrong. The 36 Sylvester Property was determined by the NYSDEC not to be the source of groundwater contamination in its 2003 ROD. The USEPA did not timely challenge the NYSDEC determination.

The tolling agreement and the amendments thereto executed between the USEPA and GME expressly do not revive lapsed claims. The tolling period set forth in the tolling agreement and subsequent amendments did not commence until March 23, 2016, well *after* the expiration of the applicable statute of limitations for challenging the determination in the 2003 ROD.

THE UAO WAS IMPROPERLY SERVED

The UAO was not served on GME. Rather, the UAO, together with some, but not all, of the appendices was emailed to GME's counsel. The UAO and all the appendices were sent by certified mail to GME's counsel, not to GME. This does not constitute appropriate service, and, therefore, the USEPA lacks jurisdiction over GME should it seek to enforce the UAO against GME.

CONCLUSION

In conclusion, there is no basis for the USEPA to have named GME as a PRP in the UAO. GME has established sufficient cause for why it is not responsible for implementation of the UAO as the 36 Sylvester Property is not a source of the groundwater contamination. Accordingly, the USEPA cannot enforce the UAO against GME and cannot seek and recover penalties, fines and treble damages from GME. On the contrary, the USEPA should drop GME as a PRP and remove it from the UAO.

GME reserves its full rights, remedies and defenses, in accordance with 42 USC § 9606(b)(2)(C), (D), and (E). GME further reserves its rights to seek reimbursement from the USEPA and/or contribution from other PRPs for the costs incurred by GME in connection with the UAO and/or the NCHGCS Site.

Very truly yours,

Charlotte Biblow

Charlotte Biblow

Enclosure
Cc: Paul Merandi, GME (via email)

Department of Environmental Conservation

Division of Environmental Remediation

Record of Decision

36 Sylvester Street Site
Town of North Hempstead, Nassau County
New York
Site Number 1-30-043U

March 2003

New York State Department of Environmental Conservation
GEORGE E. PATAKI, *Governor* ERIN M. CROTTY, *Commissioner*

DECLARATION STATEMENT - RECORD OF DECISION

36 Sylvester Street Inactive Hazardous Waste Disposal Site
Town of North Hempstead, Nassau County, New York
Site No. 1-30-043U

Statement of Purpose and Basis

The Record of Decision (ROD) presents the selected remedy for the 36 Sylvester Street site, a Class 2 inactive hazardous waste disposal site. The selected remedial program was chosen in accordance with the New York State Environmental Conservation Law and is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300), as amended.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (NYSDEC) for the 36 Sylvester Street inactive hazardous waste disposal site, and the public's input to the Proposed Remedial Action Plan (PRAP) presented by the NYSDEC. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Assessment of the Site

Actual or threatened release of hazardous waste constituents from this site have been addressed by implementing the interim remedial measure identified in this ROD. The removal of contaminated soil from the site has significantly reduced the threat to public health and the environment.

Description of Selected Remedy

Based on the results of the Remedial Investigation and Feasibility Study (RI/FS) for the 36 Sylvester Street site and the criteria identified for evaluation of alternatives, the NYSDEC has selected No Further Action. Any groundwater use at the site will comply with the Nassau County Department of Health's use and development restrictions limiting the utilization of groundwater as potable or process water without necessary water quality treatment.

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy selected for this site is protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal element.

MAR 1 4 2003

Date

Dale A. Desnoyers, Director
Division of Environmental Remediation

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36 Sylvester Street Site
Town of North Hempstead, Nassau County, New York
Site No. 1-30-043U
March 2003

SECTION 1: SUMMARY OF THE RECORD OF DECISION

The New York State Department of Environmental Conservation (NYSDEC) in consultation with the New York State Department of Health (NYSDOH) has selected a remedy for the 36 Sylvester Street Site. As more fully described in Sections 3 and 5 of this document, disposal of hazardous wastes including volatile organic compounds such as 1,1,1-trichloroethane, and inorganics (metals) such as chromium, copper, mercury and zinc, at the Site resulted in the following significant threats to the public health and/or the environment:

- a significant threat to human health and the environment associated with this site's contravention of groundwater standards in a sole source aquifer.

The contaminated groundwater at the 36 Sylvester Street Site and within the entire New Cassel Industrial Area (NCIA) presents a potential route of exposure to humans. The area is served by public water, however, the underlying aquifer is the source of the water supply for the Bowling Green Water District customers. An air stripping treatment system was constructed in 1996 to mitigate the impact of the groundwater contamination on the Bowling Green water supply wells. The Bowling Green water supply wells are routinely monitored for compliance with New York State Department of Health Drinking Water Standards. Presently, no site specific contaminants exceeding drinking water standards have been detected in the water distributed to the public. Early warning monitoring wells have been installed south of Old Country Road, in locations downgradient of the NCIA inactive hazardous waste disposal sites and upgradient of the water supply wells as a precautionary measure. Therefore, use of the groundwater in the area is not currently considered an exposure pathway of concern. Additionally, existing use and development restrictions preventing the use of groundwater as a source of potable or process water without necessary water quality treatment are required by the Nassau County Department of Health.

Currently, there are twelve (12) Class 2 sites in the NCIA. A Class 2 site is a site at which hazardous waste constitutes a significant threat to the environment or the public health and action is required. The Department has been using a three-prong strategy in remediating Class 2 sites in the NCIA. The first action identifies source areas at each site which will be remediated or removed; the second action includes the investigation and proper remediation of groundwater contamination at and beneath each site; and the third action is the ongoing efforts by the Department which include a detailed investigation of groundwater contamination that is migrating off-site from all Class 2 sites within the NCIA.

During the course of the investigation a certain action, known as an interim remedial measure (IRM), was undertaken at the 36 Sylvester Street Site in response to the threats identified above. An IRM

is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before completion of the RI/FS. The IRM undertaken at this site included the removal of contaminated soil from an on-site drywell.

Based on the implementation of the above IRM, the findings of the investigation of this site indicate that the site no longer poses a significant threat to human health or the environment, therefore No Further Action was selected as the remedy for this site.

The selected remedy, discussed in detail in Section 6, is intended to attain the remediation goals identified for this site in Section 6. The remedy must conform with officially promulgated standards and criteria that are directly applicable, or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, criteria and guidance are hereafter called SCGs.

SECTION 2: SITE LOCATION AND DESCRIPTION

The 36 Sylvester Street Site, No. 1-30-043U is located at 36 Sylvester Street, Westbury, New York and is designated by the Nassau County Tax Assessors Office as Section 11, Block 77, Lots 21-24 and 56-59. The site is bounded by Sylvester Street to the west, New York Avenue to the east, and is approximately 400 feet north of Old Country Road. See Figures 1 and 2. The site is approximately 20,000 square feet with a 12,125 square feet, single-story masonry building. The remainder of the site consists of asphalt parking areas and concrete walkways. The site topography is flat. The site is located in the New Cassel Industrial Area (NCIA), a 170 acre industrial and commercial area, in the Town of North Hempstead, Nassau County. Currently, thirteen (13) Class 2 sites exist in the NCIA. The NCIA is highly developed and no significant surface water sources exist near the site. The nearest surface waters are small ponds within the Eisenhower Memorial Park located about two miles southwest of the site.

SECTION 3: SITE HISTORY

3.1: Operational/Disposal History

The 36 Sylvester Street Site was initially developed around 1952 with a one-story, masonry building. The building was improved with an addition onto the eastern portion of the building in June 1953. The building covers most of the lot with the exception of alleys on the north and south portions of the site. Historically, the site was used for industrial applications that included the manufacturing of precision machinery. Former occupants of the site included American Express Field Warehousing Corp., Universal Transistor Products Corp., National Gear Products; and the current owner, Grand Machinery Exchange.

The building was originally serviced by an on-site sanitary disposal system that consisted of two drywells. The on-site sanitary disposal system was abandoned when the facility was connected to the municipal sewer system in January 1987. On-site chemical storage associated with the operations of previous occupants included cutting and lubricating oils, mineral spirits and waste oils. Presently, the site is operated by Gel-Tec, a division of Tishcon Corp., and used primarily as a warehouse unit by Gel-Tec.

3.2: Remedial History

In 1999, the NYSDEC listed the site as a Class 2 site in the Registry of Inactive Hazardous Waste Disposal Sites in New York. A Class 2 site is a site where hazardous waste presents a significant threat to the public health or the environment and action is required.

In 1986, the Nassau County Department of Health (NCDH) completed an investigation of groundwater quality and found the NCIA to be a major source of volatile organic chemical (VOC) contamination in groundwater. As a result of this investigation, the NYSDEC classified the entire NCIA as a Class 2 site in August 1988. The Class 2 designation indicates that the site poses a significant threat to the public health or the environment and requires action. In February 1995, the NYSDEC's consultant completed a site investigation report for the NCIA under the New York State Superfund program. Based on this report, the NYSDEC removed the NCIA from the Registry in March 1995. At the same time, five sites within the NCIA (not including the 36 Sylvester Street Site) were added to the Registry as individual Class 2 sites.

The site was subsequently listed on the Registry as a result of a NYSDEC investigation. The Site Investigation Report is available for review at the document repositories.

SECTION 4: ENFORCEMENT STATUS

Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators, and haulers.

The NYSDEC and Grand Machinery Exchange, Inc. entered into a Consent Order on March 8, 2000. The Order obligates the responsible parties to implement a RI/FS remedial program.

SECTION 5: SITE CONTAMINATION

A remedial investigation/feasibility study (RI/FS) has been conducted to evaluate the alternatives for addressing the significant threats to human health and the environment.

5.1: Summary of the Remedial Investigation

The purpose of the RI was to define the nature and extent of any contamination resulting from previous activities at the site.

The RI was conducted in two phases. The first phase, conducted between August 2000 and November 2000, provided a site survey and preliminary evaluation of the site. A report entitled Focused Remedial Site Survey Report, dated November 20, 2000, has been prepared which describes the field activities and findings of the site survey portion of the RI in detail. The main investigation, with sampling locations chosen based on the Focused Remedial Site Survey Report, took place from June 2001 to August 2001. The RI report was finalized in September 2002, after evaluation of the IRM carried out on May 9, 2002.

The following activities were conducted during the RI:

- An exterior inspection to identify drainage structures, loading areas, utility service entrances, vents and sanitary connections.

- An interior inspection to determine current building uses, facility locations, discontinuities indicative of prior plumbing arrangements and any items that warranted further investigation using remote sensing and/or destructive survey methods.

- A geophysical survey employing ground penetrating radar (GPR) was performed to determine the locations of underground structures, pipes and storage tanks.

- Destructive surveys to expose subsurface structures including two abandoned drywells associated with the former on-site sanitary disposal system, floor drains in the southeastern portion of the warehouse, a concrete patch in the southeastern portion of the warehouse, and the interior roof drainage pipe with open ports in the southern portion of the warehouse.

- Soil samples were taken by Geoprobe® at two locations at six depths from 18 to 45 feet below ground surface (bgs). Both locations were in or near drywells associated with the former on-site sanitary disposal system.

- Groundwater samples were taken at seventeen locations by Geoprobe® at three depths ranging form 60 to 80 feet bgs.

To determine whether the soil and groundwater contains contamination at levels of concern, data from the investigation were compared to the following SCGs:

- Groundwater, drinking water and surface water SCGs are based on the NYSDEC "Ambient Water Quality Standards and Guidance Values" and Part 5 of the New York State Sanitary Code.

- Soil SCGs are based on the NYSDEC "Technical and Administrative Guidance Memorandum (TAGM) 4046; Determination of Soil Cleanup Objectives and Cleanup Levels".

Based on the RI results, in comparison to the SCGs and potential public health and environmental exposure routes, certain media and areas of the site require remediation. These are summarized below. More complete information can be found in the RI Report.

5.1.1: Site Geology and Hydrogeology

The site's surface is basically paved. Beneath the site are two water bearing layers, the Upper Glacial Aquifer over the Magothy Aquifer. The Upper Glacial Aquifer (UGA) consists of Upper Pleistocene deposits of poorly sorted sands and gravel found from the surface to a depth of approximately 80 ft bgs. The UGA is an unconfined aquifer consisting of poorly sorted sands and gravels. Beneath the UGA lies the Magothy consisting of finer sands, silt and small amounts of clay.

Usually, the upper surface of the Magothy formation is found at least 100 ft bgs. However, based on observations during well installation for this investigation, the Magothy is found in the NCIA at significantly shallower depths (60-87 ft bgs) than in many other areas of Long Island. Similarly, the UGA and the Magothy are usually separated by a clay aquitard but in this area the UGA and the Magothy are in direct hydraulic connection. Depth to groundwater is about 55 ft bgs in the area of the site and groundwater flows in a southwesterly direction. Both the UGA and Magothy have been designated as sole-source aquifers and are protected under state and federal legislation.

5.1.2: Nature of Contamination

As described in the RI report, soil and groundwater samples were collected at the site to characterize the nature and extent of contamination. As summarized in Tables 1, 2, and 3, and the text below, the main categories of contaminants which exceed their SCGs are volatile organic compounds (VOCs) and inorganics (metals).

The VOCs of concern are 1,1-dichloroethene, 1,1-dichloroethane, 1,1,1-trichloroethane, tetrachloroethane, 1,4-dichlorobenzene, 1,2,4-trimethylbenzene and 1,3,5-trimethylbenzene.

The inorganics (metals) of concern are chromium, copper, mercury and zinc.

5.1.3: Extent of Contamination

This section describes the findings of the investigation for all environmental media that were investigated.

Chemical concentrations are reported in parts per billion (ppb) for water and parts per million (ppm) for soil. For comparison purposes, where applicable, SCGs are provided for each medium.

The following are the media which were investigated and a summary of the findings of the investigation.

Subsurface Soil

Soil samples were taken at the locations corresponding to the two drywells (UIW-001 and UIW-002) located at the site's southwest corner. See Figure 3 for the location of the drywells. At each drywell location, soil samples were taken at six depths, from 18 ft bgs to 45 ft bgs. The greatest contamination was found in drywell UIW-001 at a depth of 18 ft bgs. VOC contaminants detected included 55 ppb of tetrachloroethylene, 900 ppb of 1,4- dichlorobenzene, 93 ppb of 1,3,5-trimethylbenzene and 140 ppb of 1,2,4- trimethyl benzene. Soil cleanup guidelines were not exceeded for VOC contaminants. The principle groundwater contaminants at the site; 1,1,1-trichloroethane, 1,1-dichloroethene, 1,1-dichloroethane and trichloroethene, were not detected in subsurface soil sampling during the RI. Metals exceeding soil cleanup guidelines were found in UIW-001 and include chromium (81.3 ppm), copper (961 ppm), mercury (1.75 ppm) and zinc (331 ppm). The soil cleanup guidelines for chromium, copper, mercury and zinc are 10 ppm, 25 ppm, 0.1 ppm and 20 ppm, respectively.

Groundwater

Groundwater samples were taken by Geoprobe® at 17 locations. Sampling was done at three depths at each location: 60, 70 and 80 ft bgs. The highest level of VOC contamination was found at 60 ft bgs at GP-007, located on the eastern side of the site. At this location, total VOCs were 4,670 ppb, with the highest contaminant being 1,1,1- trichloroethane at 2,500 ppb. See Figures 3, 4 and 5 for groundwater sampling locations and contaminant concentrations at the site. Tables 1, 2 and 3 give contaminant concentrations for water samples taken at each of the 17 locations at 60, 70 and 80 ft. bgs.

The two drywells UIW-001 and UIW-002 would be the most likely source of VOC groundwater contamination at the site. However, contaminant concentrations were typically highest at sampling locations east of the drywells and much lower to the west. If the drywells were the source of the groundwater contamination found beneath the site, the contamination would be greater to the west and less to the east (groundwater at the site flows from northeast to southwest). VOC contamination with the same constituents as the on-site contamination is also found directly upgradient of the site. Additionally, as noted above, the primary constituents of the groundwater contamination at the site (1,1,1- trichloroethane, 1,1-dichloroethene, 1,1-dichloroethane and trichloroethene) were not found in on-site subsurface soils. There are two Class 2 sites located upgradient and to the east of the subject site, which are associated with the VOC contaminants found in groundwater at the site.

5.2: Interim Remedial Measures

An Interim Remedial Measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before completion of the RI/FS.

An IRM was completed at the 36 Sylvester Street Site on May 9, 2002 to address the metals and VOC contamination described in the RI report as UIW-001. This drywell was uncovered and accessed using an excavator (backhoe).

The contaminated soil contained within the drywell was excavated to a depth of about twenty (20) feet bgs. The well structure was left in place. The excavation was then backfilled with clean soil to grade. Approximately fifteen (15) cubic yards of contaminated soil was removed from the drywell and stored in a proper waste container for subsequent off-site disposal. The contaminated material, sent to RGM, Inc. of Deer Park, New York,. was transported and disposed in accordance with Title 6 NYCRR Part 371 and EPA 40 CFR 261 criteria.

One endpoint sample was taken after excavation from the bottom of drywell UIW-001. The laboratory analysis of the soil sample failed to detect any volatile or semi-volatile organic contaminants above minimum detection limits. The laboratory analysis did detect metal contamination, however the concentrations were below the applicable SCGs.

The drywell identified as UIW-002 was uncovered and accessed utilizing an excavator (backhoe). No remedial activities were required with respect to this structure. The structure was accessed for proper abandonment procedures, including backfilling of UIW-002 with clean soil to grade.

5.3: Summary of Human Exposure Pathways

This section describes the types of human exposures that may present added health risks to persons at or around the site. A more detailed discussion of the health risks can be found in Section 5 of the RI report.

An exposure pathway describes the means by which an individual may be exposed to contaminants originating from a site. An exposure pathway has five elements: [1] a contaminant source, [2] contaminant release and transport mechanisms, [3] a point of exposure, [4] a route of exposure, and [5] a receptor population.

The source of contamination is the location of contaminant release to the environment (any waste disposal area or point of discharge). Contaminant release and transport mechanisms carry contaminants from the source to a point where people may be exposed. The exposure point is a location where actual or potential human contact with a contaminated medium may occur. The route of exposure is the manner in which a contaminant actually enters or contacts the body (e.g., ingestion, inhalation, or direct contact). The receptor population is the people who are, or may be, exposed to contaminants at a point of exposure.

An exposure pathway is complete when all five elements of an exposure pathway are documented. An exposure pathway is considered a potential pathway when one or more of the elements currently does not exist, but could in the future.

Pathways which are known to or may exist at the site include:

- Ingestion of contaminated groundwater.

The contaminated groundwater at the site and within the entire NCIA represents a potential route of exposure to humans. The Bowling Green Water District provides public water to the area. Supply wells for this water district are located downgradient of the NCIA and these wells have been impacted by contamination. In 1996, an air stripping treatment system was constructed to treat the water supply wells. The Bowling Green Water District system is routinely monitored for compliance with New York State Drinking Water Standards. No site related contaminants have been detected exceeding drinking water standards in the water distributed to the public. Monitoring wells have been installed up-gradient of the water supply wells as a precautionary measure to detect any migrating plumes that could impact the well field above the capacity of the treatment system. Additionally, existing use and development restrictions preventing the use of groundwater as a source of potable or process water without necessary water quality treatment are required by the Nassau County Department of Health. With these measures in place, the use of the groundwater in the area is not currently considered an exposure pathway of concern.

5.4: Summary of Environmental Exposure Pathways

This section summarizes the existing and potential future environmental impacts presented by the site. Environmental impacts include existing and potential future exposure pathways to fish and wildlife receptors, as well as damage to natural resources such as aquifers and wetlands.

Virtually every open space in the NCIA has been covered by asphalt, concrete or buildings. Since the industrial area is highly developed, no known wildlife habitat exists in or near the site. Due to the density of commercial and industrial buildings in the NCIA, there are no significant sources of surface water in close proximity to the site. The nearest surface water sources are several small ponds in and around Eisenhower Memorial Park, approximately two miles southwest of the site across Old Country Road.

The contaminated groundwater found within the NCIA does present a potential route of exposure to the environment, however, no known exposure pathway of concern between the contaminated groundwater and the environment exist. Consequently, the potential for plants or animal species being exposed to site related contaminants is minimal.

SECTION 6: SUMMARY OF THE REMEDIAL GOALS AND SELECTED REMEDY

Goals for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375-1.10. At a minimum, the remedy selected must eliminate or mitigate all significant threats to public health and/or the environment presented by the hazardous waste disposed at the site through the proper application of scientific and engineering principles.

Prior to the completion of the IRM described in Section 5.2, the remediation goals for this site were to eliminate or reduce to the extent practicable:

- exposures to persons at or around the site to metals in contaminated drywell sediments.
- the release of contaminants from soil into groundwater that may create exceedances of groundwater quality standards

The NYSDEC believes that the IRM has accomplished these remediation goals.

Based on the results of the investigations at the site, the IRM that has been performed, and the evaluation discussed below, the NYSDEC has selected No Further Action as the remedy for the site. The NYSDEC will also delist the site from the New York Registry of Inactive Hazardous Waste Disposal Sites.

The basis for this selection is the NYSDEC's conclusion that No Further Action will be protective of human health and the environment and will meet all SCGs. Overall protectiveness is achieved through meeting the remediation goals listed above. The only area on the site found to be contaminated with hazardous materials or metals in exceedance of SCGs was the drywell area identified as UIW-001, which was addressed by the IRM. The IRM has successfully removed all on-site soil contaminants found to be in exceedance of SCGs at the site. Since there are no longer

any soil contaminants in exceedance of SCGs, there no longer exists a possibility of ingesting, inhaling or contacting such materials. Additionally, since no on-site source remains, there is no longer a possibility of the site contributing to the contaminated groundwater plumes within the NCIA, either beneath or downgradient of the site. The majority of the on-site groundwater VOC contamination is not attributed to the site.

The main SCGs applicable to this project are as follows:

- NYSDEC TAGM 4046 (metals in soils). The removal of contaminated material from UIW-001 has addressed the only known possible on-site source area for soil and groundwater contamination.

Therefore, the NYSDEC concludes that the IRM already completed has achieved the remediation goals for the site and that No Further Action is needed.

SECTION 7: HIGHLIGHTS OF COMMUNITY PARTICIPATION

As part of the remedial investigation process, a number of Citizen Participation activities were undertaken to inform and educate the public about conditions at the site and the potential remedial alternatives. The following public participation activities were conducted for the site:

- Repositories for documents pertaining to the site were established.
- A public contact list, which included nearby property owners, elected officials, local media and other interested parties, was established.
- A public meeting was held on December 12, 2002 to present and receive comment on the PRAP.
- Public information meetings regarding the entire New Cassel Industrial Area were held in May 1995, January 1996, May 1996, October 1996, May 1997, December 1997, May 1998, December 1998, May 1999, September 1999, February 2000, May 2000, January 2001, and December 2001.
- A responsiveness summary (Appendix A) was prepared to address the comments received during the public comment period for the PRAP.

No significant public comments were received.

Table 1
Site # 1-30-043U 36 Sylvester Street
August 2001 Groundwater Sampling Results
Volatile Organic Compounds (in ppb)
Groundwater Samples Collected At 60 Feet

Analytes	1,1-Dichloroethene	Methylene Chloride	1,1-Dichloroethane	1,1,1-Trichloroethane	Trichloroethene	1,1,2-Trichloroethane	Tetrachloroethene
SCG (ppb)	5	5	5	5	5	5	5
Sample ID							
UPGRADIENT							
GP-003	34.0	ND	68.0	180 E	320 E	ND	33.0
GP-004	130 E	ND	220 E	850 E	1,100 E	ND	37.0
GP-005	200 E	ND	570 E	940 E	240 E	ND	13.0
GP-006	550 E	ND	580 E	1,900 E	360 E	ND	38.0
GP-007	600 E	ND	930 E	2,500 E	310 E	ND	32.0
GP-011	16.0	10 B	21.0	59 B	4.0	ND	4.7
GP-012	10.0	5.1 B	43.0	13 B	ND	ND	ND
GP-013	16.0	3.4 B	73.0	45 B	3.6	ND	3.3
GP-014	9.6	4.2 B	22.0	15 B	12.0	ND	1.4
GP-015	32.0	5.1 B	60.0	80 B	560 E	ND	36.0
GP-016	33.0	5.7 B	31.0	130 E	230 E	ND	29.0
GP-017	22.0	4.8 B	21.0	120 E	100 E	ND	25.0
ONSITE							
UIW-001	320.0	ND	ND	2400 E	170 E	0.9	15.0
UIW-002	240.0	ND	ND	2,500 E	120 E	ND	49.0
DOWNGRADIENT							
GP-008	290 E	ND	420 E	1,500 E	410 E	ND	21.0
GP-009	390 E	12 B	480 E	770 E	380 E	ND	34.0
GP-010	130.0	43 B	340.0	110 B	150.0	ND	21.0

Only detected compounds are reported

Notes: All results are in ug/L (parts per billion - ppb)

ND = Non-detectable above the analytical method detection limit (MDL)
J = Indicates an estimated value which is less than the specified detection limit but greater than zero
E = Indicates the analyte concentration exceeds the instrument calibration limits
B = Indicates the analyte was found in both the sample and associated laboratory blank
- = Indicates no standard available for the specified compound

Table 6.2
Site #1-30-0491 - 35 Sylvester Street
August 2004 Groundwater Sampling Results
Volatile Organic Compounds (in ppb)
Groundwater Samples Collected At 70 Feet

Analytes	1,1-Dichloroethene	Methylene Chloride	1,1-Dichloroethane	1,1,1-Trichloroethane	Trichloroethene	1,1,2-Trichloroethane	Tetrachloroethene
SCG (ppb)	5	5	5	5	5	5	5
Sample ID							
				UPGRADIENT			
GP-003	12.0	ND	15.0	43.0	44.0	ND	ND
GP-004	33.0	ND	82.0	140 E	420 E	ND	17.0
GP-005	53.0	ND	76.0	200 E	960 E	ND	41.0
GP-006	52.0	ND	47.0	230 E	610 E	ND	42.0
GP-007	82.0	ND	54.0	280E	870 E	ND	50.0
GP-011	13.0	8.7 B	21.0	53 B	3.7	ND	3.3
GP-012	8.5	8.7 B	8.4	8 B	ND	ND	ND
GP-013	4.9	3 B	ND	5.2 B	1.6	ND	ND
GP-014	6.2	2.9 B	ND	9.3 B	9.5	ND	1.0
GP-015	26.0	4.5 B	29.0	100 B	490 E	ND	20.0
GP-016	32.0	6.6 B	48.0	160 E	190 E	ND	21.0
GP-017	26.0	6.8 B	17.0	60 B	140 E	ND	12.0
				ON SITE			
UIW-001	1,000 E	ND	130E	1,800 E	520 E	ND	61.0
UIW-002	450 E	ND	61.0	2,400 E	470 E	2.4	40.0
				DOWNGRADIENT			
GP-008	380 E	ND	450 E	1,900 E	660 E	ND	44.0
GP-009	400 E	11 B	400 E	710 E	500 E	ND	48.0
GP-010	92.0	9.4 E	170 E	260 E	120 E	3.3	18.0

Only detected compounds are reported.

Notes: All results are in ug/L (parts per billion - ppb)

ND = Non-detectable above the analytical method detection limit (MDL)

J = Indicates an estimated value which is less than the specified detection limit but greater than zero

E = Indicates the analyte concentration exceeds the instrument calibration limits.

B = Indicates the analyte was found in both the sample and associated laboratory blank

- = Indicates no standard available for the specified compound

Table 3
Site 1-30-043U, 36 Sylvester Street
August 2001 Groundwater Sampling Results
Volatile Organic Compounds (in ppb)
Groundwater Samples Collected At 80 Feet

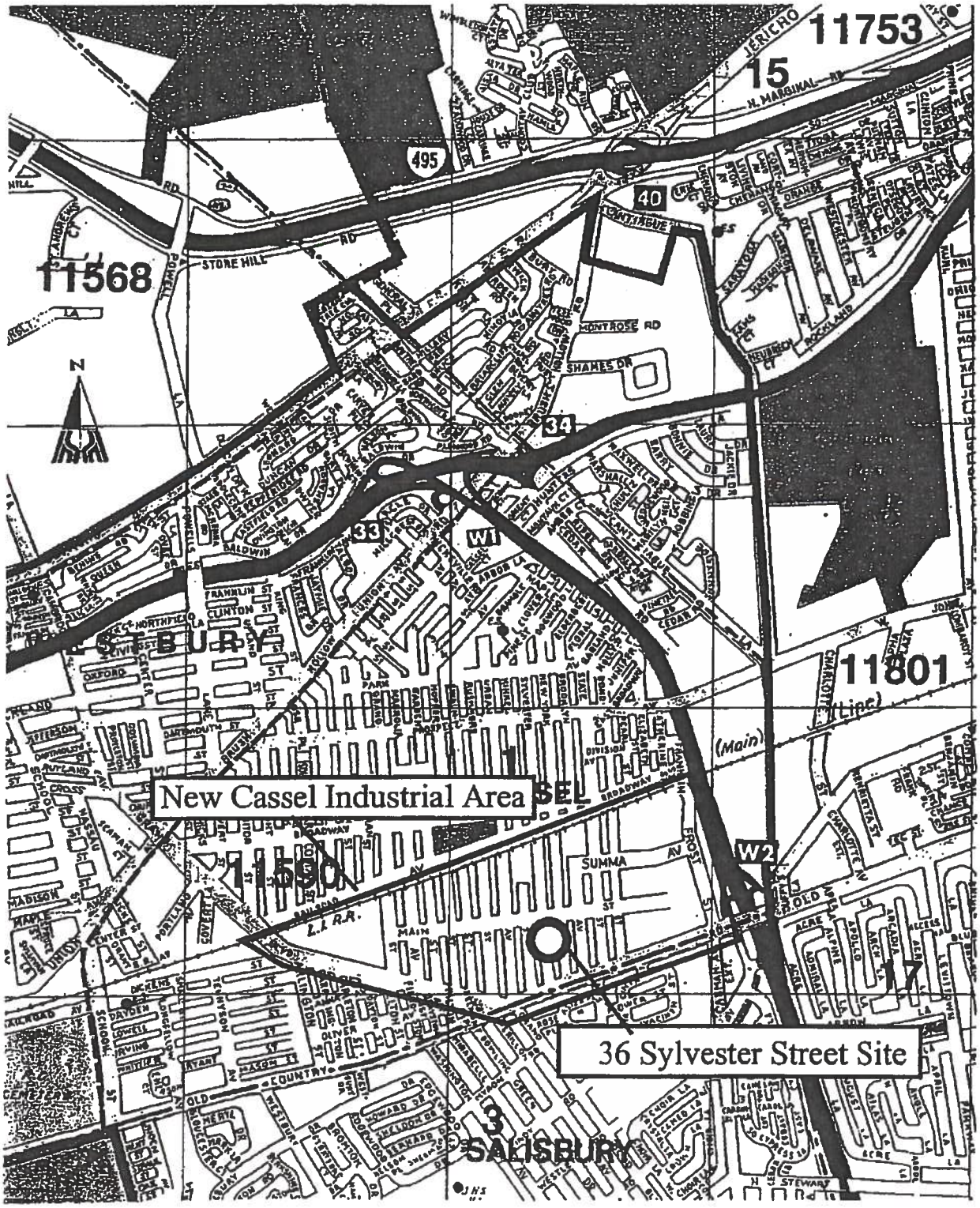
Analytes	1,1-Dichloroethene	Methylene Chloride	1,1-Dichloroethane	1,1,1-Trichloroethane	Trichloroethene	1,1,2-Trichloroethane	Tetrachloroethene
SCG (ppb)	5	5	5	5	5	5	5
Sample ID							
				UPGRADIENT			
GP-003	5.6	ND	ND	17.0	14.0	ND	ND
GP-004	21.0	ND	26.0	59 B	93.0	ND	4.7
GP-005	17.0	ND	8.2	45 B	600 E	ND	16.0
GP-006	42.0	ND	37.0	140 E	450 E	ND	14.0
GP-007	77.0	ND	68.0	290 E	1,200 E	ND	72.0
GP-011	14.0	8.9 B	21.0	55.0	4.8	ND	4.0
GP-012	9.4	8.7 B	3.3	16 B	1.1	ND	1.4
GP-013	ND	9 B	ND	4.4 B	ND	ND	ND
GP-014	9.4	3.2 B	ND	10 B	11.0	ND	1.3
GP-015	14.0	4.1 B	5.4	31 B	140 E	ND	6.3
GP-016	31.0	5 B	34.0	150 E	190 E	ND	24.0
GP-017	23.0	6.9 B	12.0	51 B	220 E	ND	13.0
				ON SITE			
UIW-001	130 E	ND	90	330 E	240 E	3.7	ND
UIW-002	61.0	ND	79.0	330 E	1,100 E	ND	57.0
				DOWNGRADIENT			
GP-008	78.0	ND	62.0	240 E	1,300 E	ND	60.0
GP-009	170 E	9.7 B	140 E	440 E	700 E	2.7	66.0
GP-010	77.0	9.9 B	130 E	250 E	13.0	2.4	15.0

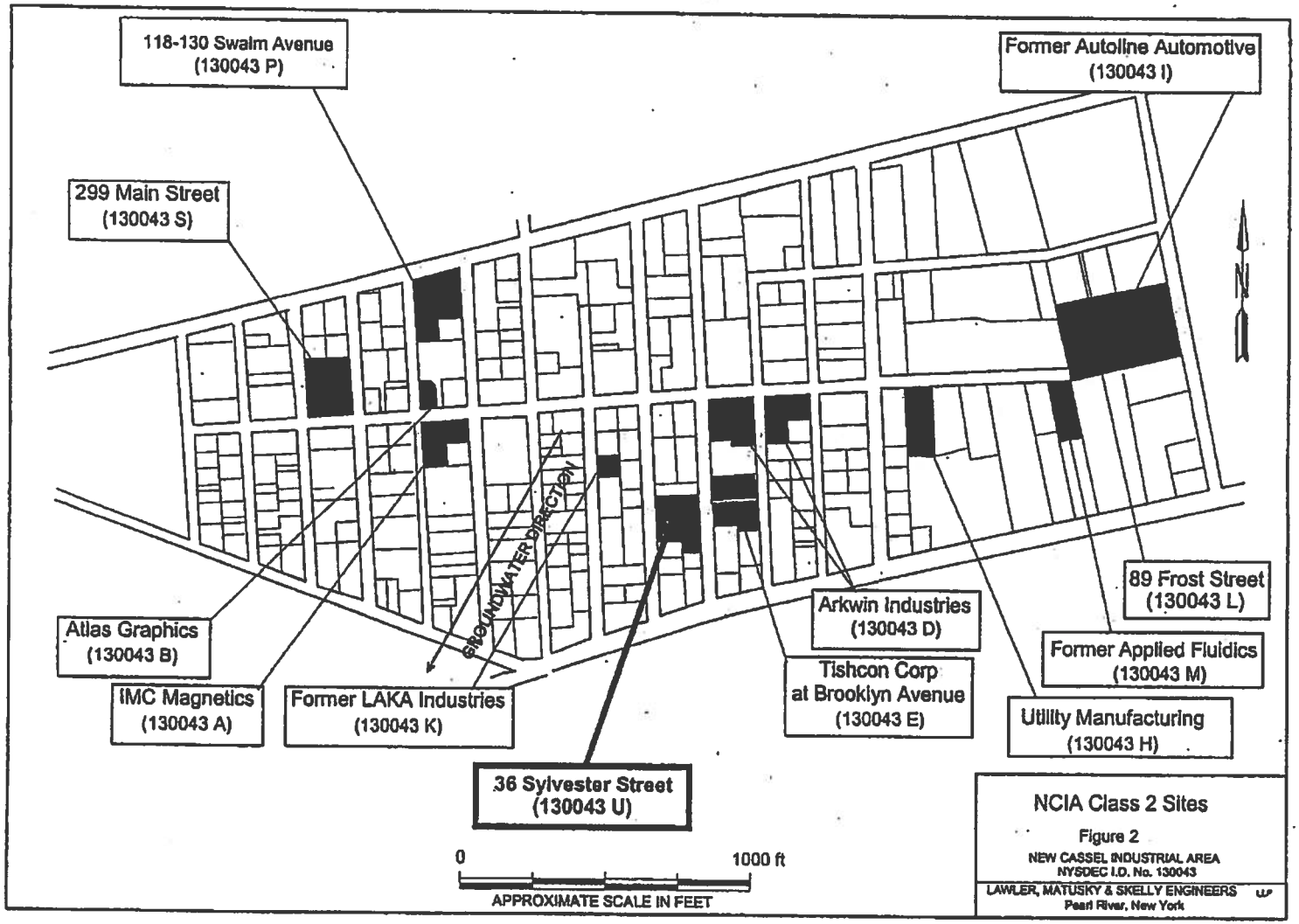
Only detected compounds are reported

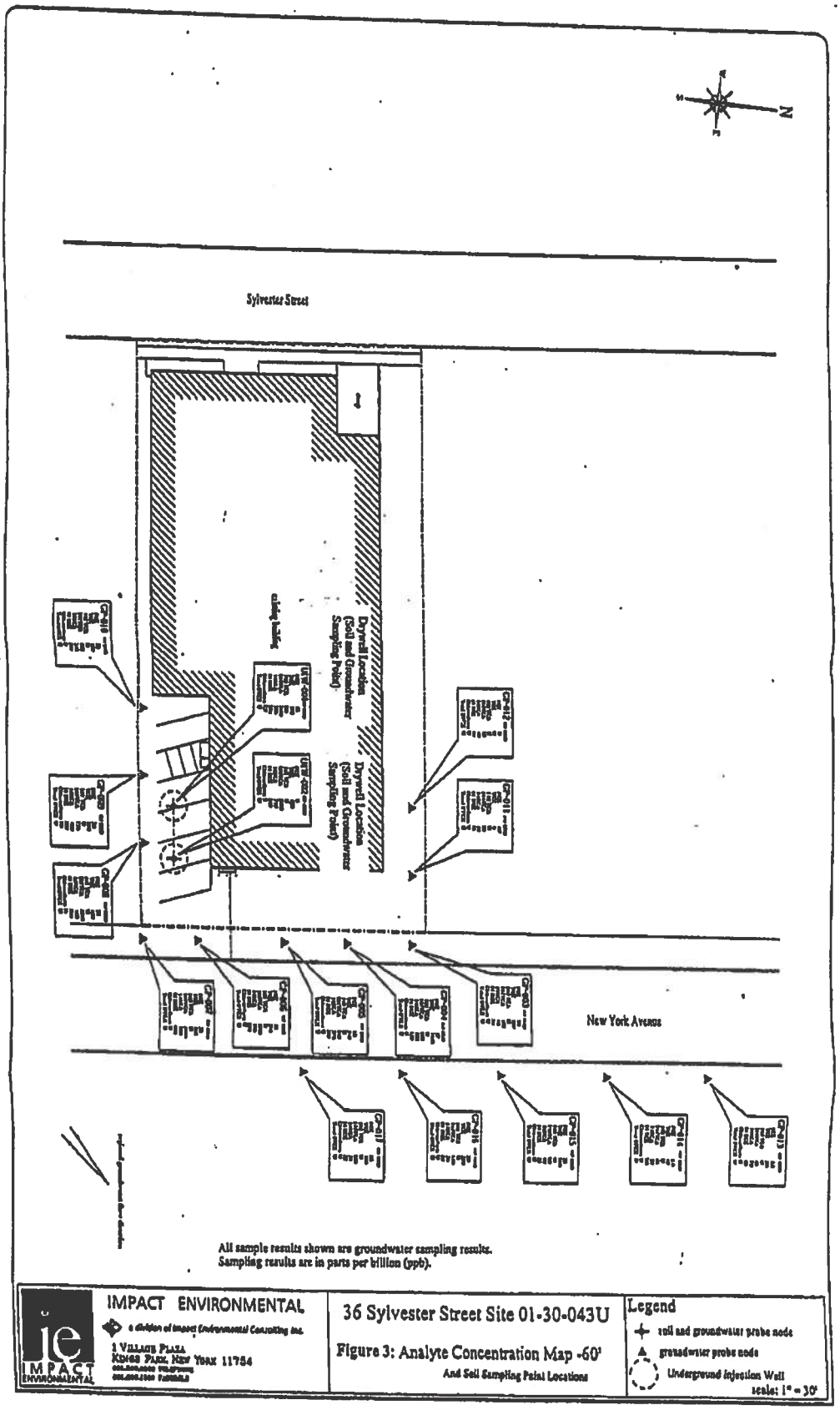
Notes: All results are in ug/L (parts per billion - ppb)

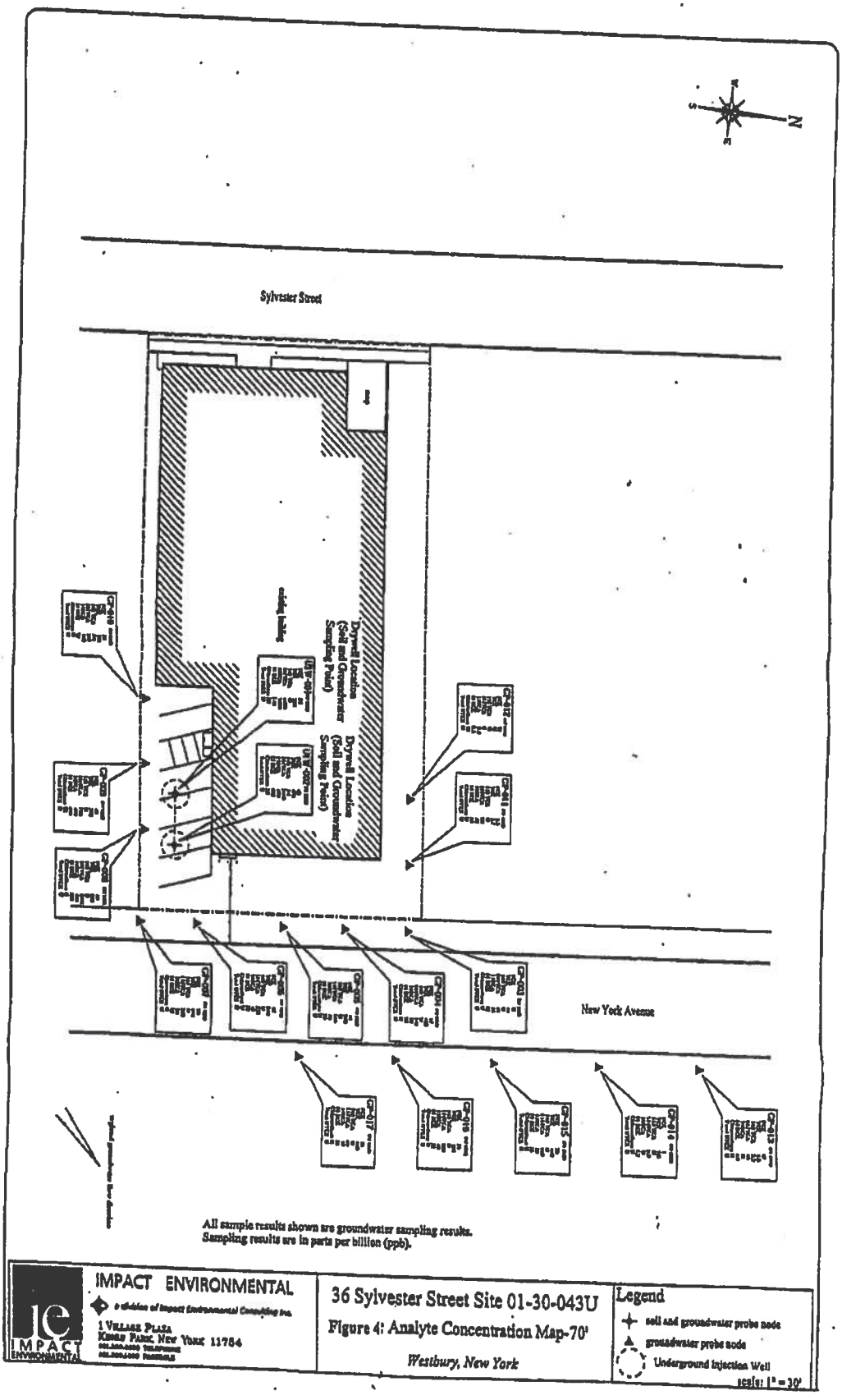
ND = Non-detectable above the analytical method detection limit (MDL)
J = Indicates an estimated value which is less than the specified detection limit but greater than zero
E = Indicates the analyte concentration exceeds the instrument calibration limits
B = Indicates the analyte was found in both the sample and associated laboratory blank
• = Indicates no standard available for the specified compound

Figure 1 - Site Location Map




118-130 Swalm Avenue
(130043 P)
Former Autoline Automotive
(130043 I)
299 Main Street
(130043 S)
N
GROUNDWATER DIRECTION
Atlas Graphics
(130043 B)
IMC Magnetics
(130043 A)
Former LAKA Industries
(130043 K)
Arkwin Industries
(130043 D)
Tishcon Corp
at Brooklyn Avenue
(130043 E)
89 Frost Street
(130043 L)
Former Applied Fluidics
(130043 M)
Utility Manufacturing
(130043 H)
36 Sylvester Street
(130043 U)
0
1000 ft
APPROXIMATE SCALE IN FEET
NCIA Class 2 Sites
Figure 2
NEW CASSEL INDUSTRIAL AREA
NYSDEC I.D. No. 130043
LAWLER, MATUSKY & SKELLY ENGINEERS
Pearl River, New York


Sylvester Street
Drywell Location (Soil and Groundwater Sampling Point)
Drywell Location (Soil and Groundwater Sampling Point)
New York Avenue
All sample results shown are groundwater sampling results.
Sampling results are in parts per billion (ppb).
IMPACT ENVIRONMENTAL
a division of Impact Environmental Consulting Inc.
1 Village Plaza
Kings Park, New York 11754
36 Sylvester Street Site 01-30-043U
Figure 3: Analyte Concentration Map -60'
And Soil Sampling Point Locations
Legend
soil and groundwater probe node
groundwater probe node
Underground injection Well
scale: 1" = 30'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Sylvester Street
Drywell Location (Soil and Groundwater Sampling Point)
Drywell Location (Soil and Groundwater Sampling Point)
New York Avenue
All sample results shown are groundwater sampling results.
Sampling results are in parts per billion (ppb).
IMPACT ENVIRONMENTAL
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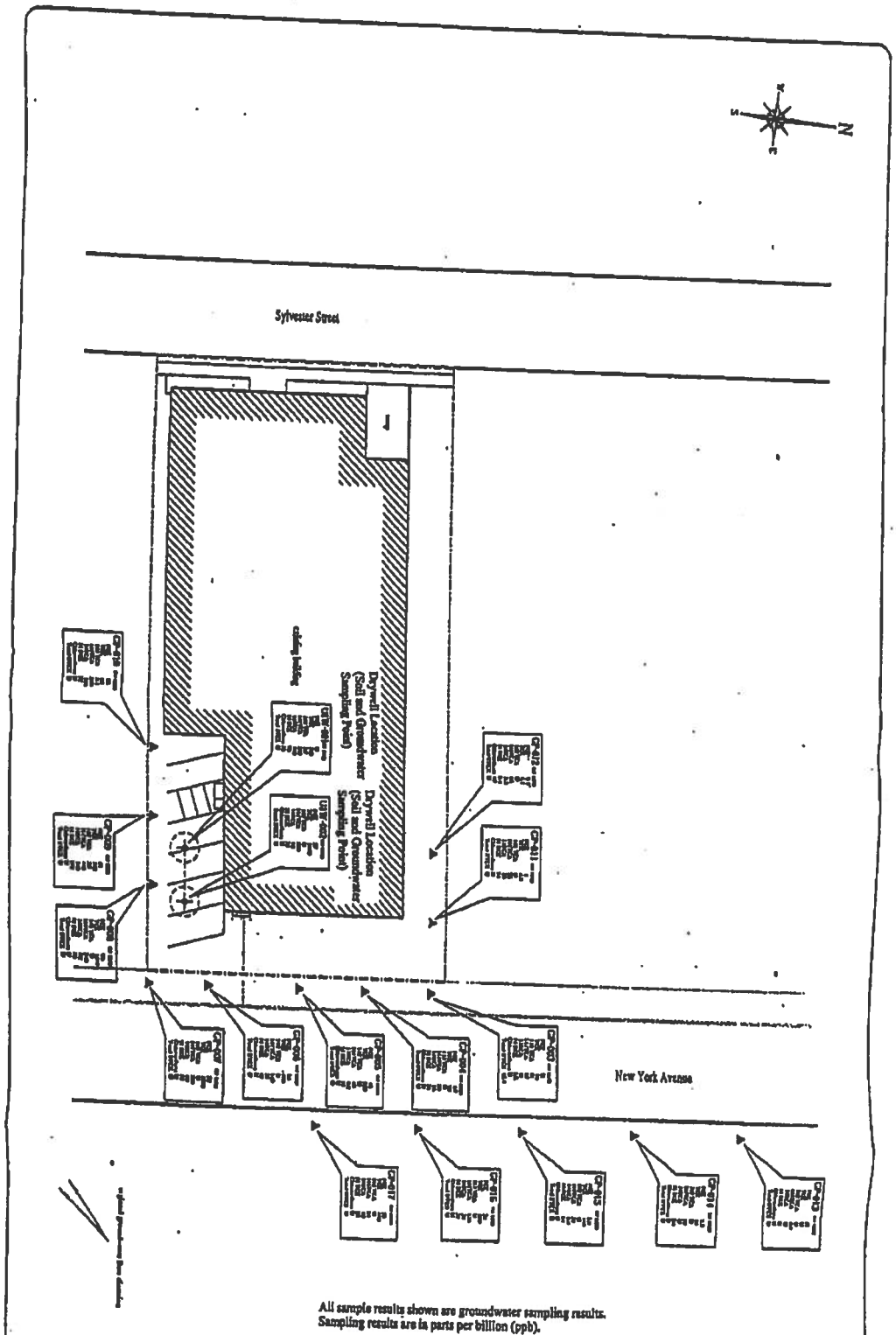
Kings Park, New York 11754
36 Sylvester Street Site 01-30-043U
Figure 4: Analyte Concentration Map-70'
Westbury, New York
Legend
soil and groundwater probe node
groundwater probe node
Underground injection Well
scale: 1" = 30'

GMEI-00907


N
Sylvester Street
Drywell Location (Soil and Groundwater Sampling Point)
Drywell Location (Soil and Groundwater Sampling Point)
New York Avenue
All sample results shown are groundwater sampling results.
Sampling results are in parts per billion (ppb).
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36 Sylvester Street Site 01-30-043U
Figure 5: Analyte Concentration Map-80'
Westbury, New York
Legend
soil and groundwater probe node
groundwater probe node
Underground injection Well
scale: 1" = 30'

APPENDIX A

Responsiveness Summary

RESPONSIVENESS SUMMARY

36 Sylvester Street
Town of North Hempstead, Nassau County, New York
Site No. 1-30-043U

The Proposed Remedial Action Plan (PRAP) for the 36 Sylvester Street site, was prepared by the New York State Department of Environmental Conservation (NYSDEC) in consultation with the New York State Department of Health (NYSDOH) and was issued to the document repositories on December 1, 2002. The PRAP outlined the remedial measure proposed for the contaminated soil at the 36 Sylvester Street site.

The release of the PRAP was announced by sending a notice to the public contact list, informing the public of the opportunity to comment on the proposed remedy.

A public meeting was held on December 12, 2002, which included a presentation of the Remedial Investigation (RI) and the Feasibility Study (FS) as well as a discussion of the proposed remedy. The meeting provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy. These comments have become part of the Administrative Record for this site. The public comment period for the PRAP ended on December 27, 2002.

This responsiveness summary responds to all questions and comments raised during the public comment period. The following are the comments received, with the NYSDEC's responses:

COMMENT 1: At what addresses are treatment systems for the upgradient Arkwin site installed?

RESPONSE 1: The treatment systems are installed for 648, 656, 662 and 670 Main Street buildings, and for the building at 66 Brooklyn Avenue.

COMMENT 2: Are all NCIA sites used for different purposes than those that resulted in contamination.

RESPONSE 2: Many, but not all, of the listed sites in the NCIA now have different usages than when the disposal took place that resulted in the sites being listed in the New York State Registry of Inactive Hazardous Waste Disposal Sites.

APPENDIX B

Administrative Record

ADMINISTRATIVE RECORD

36 Sylvester Street
Town of North Hempstead, Nassau County, New York
Site No. 1-30-043U

1. Proposed Remedial Action Plan for the 36 Sylvester Street site, dated November 2002, prepared by the NYSDEC.

2. Order on Consent, Index No. W1-0863-00-01, between NYSDEC and Grand Machinery Exchange, Inc, executed on 03/08/00.

3. Referral Memorandum dated September 7, 1999 for a preliminary site assessment of the 36 Sylvester Street site.

4. New York State Superfund Contract, Site Investigation Report, New Cassel Industrial Area Site, Work Assignment No. D002676-2.2, Lawler, Matusky and Skelly Engineers, February, 1995.

5. Comprehensive Citizen Participation Plan, New Cassel Industrial Area Site, Site ID: 1-30-043, New York State Department of Environmental Conservation, November 1995.

6. New Cassel Industrial Area Offsite Groundwater Remedial Investigation/Feasibility Study (RI/FS) Report, Volumes I, II and III, Lawler, Matusky and Skelly Engineers, September 2000.

7. "Focused Remedial Investigation Work Plan for the 36 Sylvester Street Site", February 2001, prepared by Impact Environmental.

8. "Interim Remedial Measures Work Plan for the 36 Sylvester Street Site", April 2002, prepared by Impact Environmental.

9. "Focused Remedial Investigation Report for the 36 Sylvester Street Site", November 2002, prepared by Impact Environmental.

10. 36 Sylvester Street Site Proposed Remedial Action Plan Fact Sheet, NYSDEC, November 2002.